IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.10851 OF 2004

Shri Ganpat Bhau Deshmukh : Petitioner

V/s.

The Union of India & Ors. : Respondents

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Mr.Shastry for the petitioner.

None present for the respondents.

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CORAM : DALVEER BHANDARI, C.J. &
S.A. BOBDE, J.

January 24, 2005.

P.C.:

1. The petitioner, who has been removed from service while working as a Mate with the Central Railway, has challenged the order dated 26.10.2004 passed by the Central Administrative Tribunal, Bombay Bench, dismissing his application for setting aside his removal from service.

2. The petitioner was charged for obstructing the working of the Railway and manhandling R.D.U.Verma, PWI(M), Karjat. The Inquiry Officer found him guilty of the charges. The disciplinary authority awarded the penalty of removal from service. The petitioner filed O.A. No.30 of 2001 before the Central Administrative Tribunal. The Tribunal remitted the matter back to the Appellate Authority to dispose of the appeal on merits. After giving a personal hearing to the petitioner and after ensuring that the petitioner was supplied with a copy of the inquiry report, the Appellate Authority rejected the appeal. The petitioner's revision was also rejected. Hence, he approached the Central Administrative Tribunal. The Tribunal went into the legality and propriety of the petitioner's removal from service and found that there was no reason to interfere.

3. On facts, the Tribunal perused the evidence on record and found that the disciplinary action was based on the evidence of the victim R.D.U.Verma, who clearly stated that the petitioner was involved in physical assault on him. The evidence of

R.D.U.Verma was corroborated by two other members of gang no.6 whose version was similar. We have found that the Tribunal's refusal to interfere is justified in view of the settled position of law that if there is some legal evidence on which finding can be based, then the adequacy of such evidence is not to be gone into by the Court or Tribunal. It is a settled law vide Government of Tamilnadu & Anr. v. A. Rajapandian (A.I.R. 1995 S.C. 561) that the Tribunal does not function as a Court of appeal over the decision of the inquiring authority in disciplinary proceedings. The inquiring authority is the sole Judge of facts.

4. Mr.Shastry, learned counsel for the petitioner, submitted that the inquiry is vitiated by unfairness. He referred to several aspects such as the witnesses having been examined behind the back of the petitioner and that the articles of charges and imputation of misconduct have not been signed. These grievances have been found to be factually incorrect by the Tribunal. In fact, the Tribunal has recorded a categorical statement made by the petitioner on 26.12.1998 before the Inquiry

Officer that he was fully satisfied with the manner in which the inquiry was conducted and was of the opinion that a reasonable opportunity was, in fact, given to him, vide para 6 of the impugned order.

5. The last contention on behalf of the petitioner was that the removal from service is vitiated by the fact that a copy of the inquiry report was not provided to the petitioner and, therefore, he had no opportunity to show how his case was prejudiced because of the non-supply of the report. It was, however, admitted on behalf of the petitioner that a copy of the inquiry report was given to him when the matter was remanded to the Appellate Authority. We are, therefore, of view that the petitioner has not made out any case of prejudice being caused to him because a copy of the inquiry report was not given in the first instance, but given later. This view is supported by the judgement of the Supreme Court in Managing Director, ECIL v. B. Karunakar [(1993) 4 S.C.C. 727] wherein Their Lordships have observed as follows:-

> “31. Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment.”

6. In the result, we find no merit in this Writ Petition which is hereby dismissed.

Sd/-

CHIEF JUSTICE

Sd/-

S.A. BOBDE, J.